

Senate File 491 - Introduced

SENATE FILE 491
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 1115)

A BILL FOR

1 An Act relating to the child abuse registry administered by the
2 department of human services.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.68, subsection 2, paragraph d, Code
2 2011, is amended to read as follows:

3 d. (1) The failure on the part of a person responsible for
4 the care of a child to provide for the adequate food, shelter,
5 clothing, medical or mental health treatment, supervision, or
6 other care necessary for the child's health and welfare when
7 financially able to do so or when offered financial or other
8 reasonable means to do so.

9 (2) For the purposes of subparagraph (1), failure to provide
10 for the adequate supervision of a child means the person failed
11 to provide proper supervision of a child that a reasonable
12 and prudent person would exercise under similar facts and
13 circumstances and the failure resulted in direct harm or
14 created a risk of harm to the child.

15 (3) A parent or guardian legitimately practicing religious
16 beliefs who does not provide specified medical treatment for a
17 child for that reason alone shall not be considered abusing the
18 child, however this provision shall not preclude a court from
19 ordering that medical service be provided to the child where
20 the child's health requires it.

21 Sec. 2. Section 232.68, subsection 2, Code 2011, is amended
22 by adding the following new unnumbered paragraph:

23 NEW UNNUMBERED PARAGRAPH. "*Child abuse*" or "*abuse*" shall
24 not be construed to hold a victim responsible for failing to
25 prevent a crime against the victim.

26 Sec. 3. Section 232.71D, subsections 2 and 3, Code 2011, are
27 amended to read as follows:

28 2. ~~If~~ Except as otherwise provided in subsections 3 and
29 3A, if the department issues a finding that the alleged
30 child abuse meets the definition of child abuse under section
31 232.68, subsection 2, paragraph "*a*" or "*d*", and the department
32 ~~determines the injury or risk of harm to the child was minor~~
33 ~~and isolated and is unlikely to reoccur,~~ the names of the child
34 and the alleged perpetrator of the alleged child abuse and
35 any other child abuse information shall ~~not~~ be placed in the

1 central registry as a case of founded child abuse.

2 3. a. Unless any of the circumstances listed in paragraph
3 "b" are applicable, cases to which any of the following
4 circumstances apply shall not be placed on the central
5 registry:

6 (1) A finding of physical abuse in which the department
7 has determined the injury resulting from the abuse was minor,
8 isolated, and unlikely to reoccur.

9 (2) A finding of abuse by failure to provide adequate
10 supervision or by failure to provide adequate clothing, in
11 which the department has determined the risk from the abuse
12 to the child's health and welfare was minor, isolated, and
13 unlikely to reoccur.

14 ~~b. Except as otherwise provided in section 232.68,~~
15 ~~subsection 2, paragraph "d", regarding parents legitimately~~
16 ~~practicing religious beliefs, If any of the following~~
17 ~~circumstances apply in addition to those listed in paragraph~~
18 ~~"a", the names of the child and the alleged perpetrator of~~
19 ~~the alleged child abuse and the report data and disposition~~
20 ~~data any other child abuse information shall be placed in the~~
21 ~~central registry as a case of founded child abuse under any of~~
22 ~~the following circumstances:~~

23 ~~a. (1) The case was referred for juvenile or criminal~~
24 ~~court action as a result of the acts or omissions of the~~
25 ~~alleged perpetrator or a criminal or juvenile court action~~
26 ~~was initiated by the county attorney or juvenile court within~~
27 ~~twelve months of the date of the department's report concerning~~
28 ~~the case, in which the alleged perpetrator was convicted of a~~
29 ~~crime involving the child or there was a delinquency or child~~
30 ~~in need of assistance adjudication.~~

31 ~~b. The department determines the acts or omissions of~~
32 ~~the alleged perpetrator meet the definition of child abuse~~
33 ~~under section 232.68, subsection 2, paragraph "a", involving~~
34 ~~nonaccidental physical injury suffered by the child and the~~
35 ~~injury was not minor or was not isolated or is likely to~~

1 reoccur.

2 ~~c.~~ (2) The department determines the acts or omissions
3 of the alleged perpetrator meet the definition of child
4 abuse and the department has previously determined within
5 the eighteen-month period preceding the issuance of the
6 department's report that the acts or omissions of the alleged
7 perpetrator in a prior case met the definition of child abuse.

8 ~~d.~~ The department determines the acts or omissions of the
9 alleged perpetrator meet the definition of child abuse under
10 section 232.68, subsection 2, paragraph "b", involving mental
11 injury.

12 ~~e.~~ The department determines the acts or omissions meet
13 the definition of child abuse under section 232.68, subsection
14 2, paragraph "c", and the alleged perpetrator of the acts or
15 omissions is age fourteen or older. However, the juvenile
16 court may order the removal from the central registry of the
17 name of an alleged perpetrator placed in the registry pursuant
18 to this paragraph who is age fourteen through seventeen upon a
19 finding of good cause. The name of an alleged perpetrator who
20 is less than age fourteen shall not be placed in the central
21 registry pursuant to this paragraph.

22 ~~f.~~ The department determines the acts or omissions of the
23 alleged perpetrator meet the definition of child abuse under
24 section 232.68, subsection 2, paragraph "d", involving failure
25 to provide care necessary for the child's health and welfare,
26 and any injury to the child or risk to the child's health and
27 welfare was not minor or was not isolated or is likely to
28 reoccur, in any of the following ways:

- 29 (1) ~~Failure to provide adequate food and nutrition.~~
- 30 (2) ~~Failure to provide adequate shelter.~~
- 31 (3) ~~Failure to provide adequate health care.~~
- 32 (4) ~~Failure to provide adequate mental health care.~~
- 33 (5) ~~Gross failure to meet emotional needs.~~
- 34 (6) ~~Failure to respond to an infant's life-threatening~~
35 ~~condition.~~

1 ~~g. The department determines the acts or omissions of~~
2 ~~the alleged perpetrator meet the definition of child abuse~~
3 ~~under section 232.68, subsection 2, paragraph "e", involving~~
4 ~~prostitution.~~

5 ~~h. The department determines the acts or omissions of the~~
6 ~~alleged perpetrator meet the definition of child abuse under~~
7 ~~section 232.68, subsection 2, paragraph "f", involving the~~
8 ~~presence of an illegal drug.~~

9 ~~i.~~ (3) The department determines the alleged perpetrator of
10 the child abuse will continue to pose a danger to the child who
11 is the subject of the report of child abuse or to another child
12 with whom the alleged perpetrator may come into contact.

13 Sec. 4. Section 232.71D, Code 2011, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 3A. Cases of alleged child abuse to which
16 any of the following circumstances apply shall be placed in the
17 central registry as follows:

18 a. A finding of sexual abuse in which the alleged
19 perpetrator of the abuse is age thirteen or younger. However,
20 the name of the alleged perpetrator shall be withheld from the
21 registry.

22 b. A finding of sexual abuse in which the alleged
23 perpetrator of the abuse is age fourteen through seventeen and
24 the court has found there is good cause for the name of the
25 alleged perpetrator to be removed from the central registry.
26 Only the name of the alleged perpetrator shall be removed from
27 the registry.

28 Sec. 5. Section 235A.18, subsection 3, Code 2011, is amended
29 by striking the subsection.

30 Sec. 6. Section 235A.19, subsection 2, paragraph a, Code
31 2011, is amended to read as follows:

32 a. A subject of a child abuse report may file with the
33 department within ~~six months~~ ninety days of the date of the
34 notice of the results of an assessment performed in accordance
35 with section 232.71B, a written statement to the effect that

1 report data and disposition data referring to the subject is
2 in whole or in part erroneous, and may request a correction of
3 that data or of the findings of the assessment report. The
4 department shall provide the subject with an opportunity for
5 ~~an evidentiary~~ a contested case hearing pursuant to chapter
6 17A to correct the data or the findings, unless the department
7 corrects the data or findings as requested. The department
8 may defer the hearing until the conclusion of the adjudicatory
9 phase of a pending juvenile or district court case relating to
10 the data or findings.

11 Sec. 7. CHILD PROTECTION SYSTEM IMPROVEMENTS.

12 1. The department of human services shall continue
13 working with the office of the attorney general, department
14 of inspections and appeals, office of the citizens' aide,
15 prevent child abuse Iowa, Iowa civil liberties union, and
16 other stakeholders to develop and implement improvements in
17 the child abuse assessment and registry processes and other
18 child protection system provisions as outlined in this section
19 in order to ensure the due process rights of persons alleged
20 to have committed child abuse are addressed in a more timely
21 manner while also ensuring that children are protected from
22 abuse.

23 2. The department shall implement near-term solutions that
24 can be initiated without legislation, which may include but are
25 not limited to all of the following:

26 a. Shifting financial resources to expand the positions in
27 the office of the attorney general involved with child abuse
28 appeals.

29 b. Improving the training of child protection workers
30 regarding evidence standards, confirmed child abuse, and
31 founded child abuse.

32 c. Expediting process for the director of human services'
33 review and response to administrative law judge decisions.

34 3. The department shall propose options to address
35 long-term issues with the child protection system, including

1 but not limited to all of the following:

2 a. Considering changes to registry placement provisions
3 to verify that registry placement applies to the persons who
4 have posed a consequential risk to the health and safety of the
5 child found to have been abused and unwarranted placement is
6 limited or eliminated.

7 b. Providing a differential response to child abuse
8 allegations based upon the severity of the allegation.

9 c. Allowing for reconsideration of founded abuse findings
10 or registry placement status based upon the rehabilitation of
11 the alleged perpetrator.

12 d. Providing a differential approach as to the duration of
13 registry placement based upon the severity of the child abuse
14 finding.

15 4. The department shall report to the members of the general
16 assembly's standing committees on human resources and the
17 legislative services agency providing statistics and other
18 information concerning improvements implemented, improvements
19 planned, and improvements recommended. The report shall be
20 submitted on or before December 15, 2011.

21

EXPLANATION

22 This bill relates to the child abuse registry administered
23 by the department of human services and addresses when founded
24 child abuse information is placed in the child abuse registry.

25 Code section 232.68, providing definitions of child abuse
26 and related terms, is amended. The amendment adds to the
27 definition of child abuse by a person responsible for the care
28 of a child, the person's failure to provide adequate medical
29 or mental health treatment, or supervision of the child. The
30 definition provision addressed by the amendment is commonly
31 referred to as "denial of critical care". Failure to provide
32 for the adequate supervision of the child is defined to mean
33 the person failed to provide proper supervision of a child that
34 a reasonable and prudent person would exercise under similar
35 facts and circumstances and the failure resulted in direct harm

1 or created a risk of harm to the child.

2 Under current law, denial of critical care is limited to
3 failure to provide for the adequate food, shelter, clothing, or
4 other care necessary for the child's health and welfare when
5 financially able to do so or when offered financial or other
6 reasonable means to do so. A parent or guardian legitimately
7 practicing religious beliefs who does not provide specified
8 medical treatment for a child for that reason alone is not
9 considered abusing the child, however, this exemption does not
10 preclude a court from ordering that medical service be provided
11 to the child where the child's health requires it. Although
12 the religious belief exemption is not affected by the bill, an
13 internal reference to it in Code section 232.71D is deleted.

14 The bill also addresses the overall definition of the terms
15 "child abuse" or "abuse" by providing that the terms shall
16 not be construed to hold a victim responsible for failing to
17 prevent a crime against the victim.

18 Code section 232.71D, providing criteria for whether or not
19 founded child abuse information is placed on the central child
20 abuse registry, is amended. Current law provides a specific
21 list of abuses for which there is no discretion and must be
22 placed on the registry and describes two types of abuse that
23 are not placed on the registry if certain determinations are
24 made: nonaccidental physical injury or injury at variance with
25 the history of it and the denial of critical care. For those
26 two types of abuse, in order not to be placed on the registry,
27 the department must determine that the injury or risk of harm
28 was minor, isolated, and is unlikely to reoccur.

29 The bill removes from Code section 232.71D most of the
30 specific provisions requiring registry placement and instead
31 provides a specific list of four exemptions that if any of
32 the circumstances described in the exemptions are applicable,
33 the case of founded child abuse is not placed on the central
34 registry. The first exemption listed is similar to the
35 exemption in current law: a finding of physical abuse in which

1 the department has determined the injury was minor, isolated,
2 and unlikely to reoccur. The second exemption narrows the
3 denial of critical care exemption in current law to now only
4 apply to failure to provide adequate supervision or failure to
5 provide adequate clothing, and the department must determine
6 that the risk to the child's health and welfare was minor,
7 isolated, and unlikely to reoccur. Under the bill, abuse
8 resulting from other forms of denial of critical care would
9 no longer be exempted from placement on the registry. These
10 two exception clauses do not apply if one of the following
11 circumstances is also applicable: referral of the case for
12 criminal or juvenile court action, the same perpetrator was
13 previously determined to have committed child abuse in a prior
14 case that occurred within the preceding 18-month period, or the
15 department determines the alleged perpetrator will continue
16 to pose a danger to the child involved with this case or to
17 another child.

18 The third exemption is sexual abuse when the alleged
19 perpetrator of the abuse is age 13 or younger. The fourth
20 exemption is sexual abuse when the alleged perpetrator is
21 age 14 through 17 and the court has determined there is good
22 cause for removing the name of the alleged perpetrator from
23 the registry. In such cases only the name of the alleged
24 perpetrator will be withheld or removed from the registry.

25 Subsection 3 of Code section 235A.18, relating to sealing
26 and expungement of founded child abuse information from the
27 registry, is stricken. The subsection requires the department
28 to review cases of child abuse placed in the registry before
29 the original effective date of Code section 232.71D of July
30 1, 1997. The review is required when the department is
31 considering the information while performing a record check
32 evaluation under law or administrative rule and when a review
33 is indicated under a procedure for performing reviews adopted
34 by the department.

35 Code section 235A.19, relating to requests for correction or

1 expungement of child abuse information, is amended to shorten
2 the time frame within which the subject of a child abuse report
3 may file with the department a statement that child abuse data
4 is erroneous and request correction from six months to 90 days.
5 The opportunity for the subject for an evidentiary hearing
6 is changed to a contested case hearing. Current law allows
7 the department to defer the hearing until the conclusion of a
8 pending related juvenile or district court case and the bill
9 shortens the deferral until the conclusion of the adjudicatory
10 phase of the court case.

11 The department is required to continue working with various
12 stakeholders to develop and implement improvements to the child
13 protection system. Implementation is required for near-term
14 solutions that can be implemented without legislation. The
15 department is required to propose options to address long-term
16 issues and the bill lists required provisions. A report is
17 required to be made by December 15, 2011, to the standing
18 committees on human resources and the legislative services
19 agency, to include improvements implemented, planned, and
20 recommended.